IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 1106 OF 2007(F)

PETITIONER:

C. ABDUL KAREEM, P.W.D. CONTRACTOR,
CHERIYANDEERAKATH, P.O.KUTTIKKOL,
TALIPARAMBA, KANNUR DISTRICT.

BY ADV. SRI.B.PREMNATH (E)

RESPONDENTS:

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1. THE DEPUTY COMMISSIONER (APPEAL)
COMMERCIAL TAXES, KOZHIKODE.

2. THE SALES TAX OFFICER (WORKS
CONTRACT & LUXURY TAX), CIRCLE 1,
KANNUR.

3. THE SPECIAL DEPUTY TAHSILDAR (R.R.)
TALIPARAMBA-670 141.

GOVT. PLEADER SRI. SOJAN JAMES.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

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W.P.(C) NO. 1106 OF 2007

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DATED THIS, THE 10TH DAY OF JANUARY, 2007

J U D G M E N T

The challenge made in this writ petition is against Ext.P6, an interim order passed by the appellate authority directing the petitioner to pay 40% of the amount and to furnish security for the balance amount as a condition for stay of recovery of balance amount due as per Ext.P2, pending final decision in the appeal.

2. It is the contention of the petitioner that during the assessment year 2001-02 he had not undertaken any contract work under PWD as evidenced by Ext.P1 certificate issued by the Assistant Executive Engineer and as such, there is no tax liability for the year in question. However, the assessing officer has made an assessment, which according to him, is clearly illegal. Though the appellate authority found, on examination of the contentions and verification of the records, that there is a prima facie case, still imposed an onerous condition of payment of 40% of the tax due, which

according to him, is arbitrary and illegal.

3. It cannot be said that in every case stay should be granted merely for the asking requiring the petitioner to furnish security alone. When the matter is pending in appeal, the appellate authority is entitled to consider at the interim stage as to whether there is any prima facie case and what is the balance of convenience. After considering the above two aspects, it can mould the relief appropriately. It is true that the appellate authority cannot pass the order in a mechanical way without referring to the merits of the contentions raised in the appeal. In other words, the condition to be imposed for granting the stay may vary in each cases depending upon the facts of the case. It is true that the petitioner is able to show a prima facie case that no work was executed by him during the year in question. But this is to be finally accepted by the appellate authority, after hearing both sides and considering other materials if any place on record, at the time of final hearing. In such circumstances, imposing a condition by itself is not a reason for interference at all.

4. However, in the facts and circumstances, I find that the condition to pay 40% of the tax due may lead to arbitrariness causing serious hardship to the petitioner.

5. In the circumstances and having heard both sides, there will be a direction that in case petitioner pays 25% of the assessed amount within three weeks from today and furnishes a self bond for the balance amount, there will e a stay of recovery of the balance due under Ext.P2 until the disposal of the appeal. The order passed by the appellate authority is modified accordingly. In case petitioner fails to comply with the above direction, he will loose the benefit of this judgment.

The writ petition is disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-